

APPEAL NO. 021488
FILED JULY 31, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on May 23, 2002. The hearing officer determined that the appellant/cross-respondent (claimant) did not sustain a compensable injury in the form of an occupational disease; that the respondent/cross-appellant (carrier) is relieved of liability under Section 409.002 because of the claimant's failure to timely notify her employer pursuant to Section 409.001; that the carrier is not relieved of liability under Section 409.004 because the claimant filed her claim for compensation with the Texas Workers' Compensation Commission (Commission) within one year of the injury as required by Section 409.003; that _____, is the date of injury pursuant to Section 408.007, the date the employee knew or should have known the disease may be related to her employment; and that, because there is not a compensable injury, the claimant did not have disability. The claimant appealed the hearing officer's determination as to the date of injury, failure to timely notify her employer, and injury. The file does not contain a response from the carrier. The carrier appealed the hearing officer's determination that the claimant sustained an injury in the course and scope of her employment; that the date of injury was _____; that due to the claimed injury the claimant was unable to obtain or retain employment at wages equivalent to her preinjury wage from February 1, 2001, and continuing to the date of the hearing; and that the carrier is not relieved of liability under Section 409.004 because the claimant filed a claim for compensation with the Commission within one year of the injury as required by Section 409.003. The claimant responded, urging affirmance.

DECISION

Affirmed.

Critical to the resolution of both the claimant's appeal, and the carrier's cross-appeal is whether there was an injury, the date of the claimed injury, whether the claimed injury caused the claimant to have an inability to obtain or retain employment at wages equivalent to her preinjury wage, and whether the claimant timely reported the injury to her employer. All of these issues presented a factual question for the hearing officer to resolve. The evidence presented by the parties regarding the date of injury and when it was reported to the employer was irreconcilable. Our review of the records indicates that the hearing officer's determinations that the claimant did sustain an injury, that the proper date of injury is _____, and that the claimant did not report the injury to her employer within thirty days as required by Section 409.002 thereby relieving the carrier of liability pursuant to Section 409.001 are supported by sufficient evidence and are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. We find no sound basis to reverse those determinations on appeal. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986).

Because we affirm the hearing officer's determination that the date of injury is _____, we also affirm his decision that the carrier is not relieved of liability under Section 409.004 because the claimant filed her claim for compensation with the Commission within one year of the injury as required by Section 409.003. In evidence is an Employees Notice of Injury or Occupational Disease and Claim for Compensation (TWCC-41) dated June 14, 2001, and file stamped as being received by the Commission on June 19, 2001. This is clearly within one year of _____.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **PACIFIC EMPLOYERS INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**MARCUS MERRITT
6600 CAMPUS CIRCLE DRIVE EAST, #200
IRVING, TEXAS 75063.**

Daniel R. Barry
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Susan M. Kelley
Appeals Judge